

SPECIAL CIVIL APPLICATION No 630 of 1987

Hon'ble MR.JUSTICE A.N.DIVECHA

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- [illegible]

5. Whether it is to be circulated to the Civil Judge? No

PARMESARIBEN ESSWARDAS GAJWANI

..Pet.(s)

Versus

STATE OF GUJARAT &amp; ORS.

..Resp.(s)

Appearance:

Shri Prashant G. Desai, Advocate, for Shri G.N.  
Desai, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for the  
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat

(respondent No.2 herein) on 14th July 1987 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 3 herein) on 29th November 1986 in Appeal No. Surat-86 of 1983 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 declared the holding of the petitioner to be in excess of the ceiling limit by 1385.10 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed her declaration in the prescribed form under sec. 6(1) of the Act. Its copy is at Annexure B to this petition. It appears that the petitioner also made an application for permission under sec. 21(1) of the Act. Its copy is at Annexure A to this petition. The declaration at Annexure B to this petition was duly processed by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his order passed on 14th July 1983, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 1385.10 square meters. Its copy is at Annexure C to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.3 under sec. 33 of the Act. It came to be registered as Appeal No. Surat-86 of 1983. By the order passed on 29th November 1986 in the aforesaid appeal, respondent No. 3 dismissed it. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure D to this petition.

3. It appears that the properties in question had in all three separate constructed units in existence prior to coming into force of the Act. One constructed property admeasuring 41.85 square meters was in existence in property bearing City Census No. 13/2123 and one property admeasuring 156.05 square meters was in existence in property bearing City Census No. 13/2124. It appears that there was one garage admeasuring 21 square meters and it was used for residential purpose. It does not become clear from the material on record whether the garage was a part of the constructed properties or either of them. It also does not become clear whether the aforesaid two constructed properties were part of the same building or they were separately in existence.

4. Constructed properties in existence prior to coming into force of the Act will have to be excluded from the holding of the land-holder in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567.

5. If constructed properties are in different buildings and not in the same building, each constructed property would be entitled to separate land appurtenant thereto. This view has been taken by this Court in its ruling in the case of Jayaganri Gokaldas Bhavnagar and others v. State of Gujarat and another reported in 1994(1) Gujarat Current Decisions at page 871. In that view of the matter, it would be necessary to ascertain whether the two house properties in the aforesaid lands and the garage used as residence are three separate buildings or they are one compact block. If they are three separate building units, each would be entitled to separate land appurtenant in view of the aforesaid decision of this Court. In that case, the constructed area together with the land appurtenant thereto will have to be excluded from the holding of the petitioner in view of the aforesaid binding ruling of the Supreme Court.

6. It appears that the application under sec. 21(1) of the Act made by the petitioner was pending when the impugned orders at Annexure C and D to this petition came to be passed. The petitioner has brought on record the order passed by the Superintending Engineer (the specified authority for the purposes of sec. 21 of the Act) on 11th November 1983 showing that the scheme submitted by the petitioner for the purposes of sec. 21(1) of the Act was pending. It is unfortunate that neither respondent No.2 nor respondent No. 3 has taken note of this fact while passing the impugned orders.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure D to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It would be open to respondent No.2 to take into consideration the approval to the scheme granted by the specified authority with respect to the petitioner's application under sec. 21(1) of the Act.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 14th July 1983 under sec. 8(4) of the Act at Annexure C to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 29th November 1986 in Appeal No. Surat-86 of 1983 is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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